IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FILED
SEP - 8 2016
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

MICHAEL RELLIHAN,

Plaintiff,

v.

Civil Case No. 3:16CV744

OCWEN LOAN SERVICING, LLC

Serve: Bank of America Center, 16th Floor
1111 East Main Street
Richmond, VA 23219

and

TRANS UNION, LLC,

Serve: Corporation Service Company
Bank of America Center, 16th Floor
1111 East Main Street
Richmond, VA 23219

Defendants.

COMPLAINT

The Plaintiff, MICHAEL RELLIHAN, (hereinafter, "Plaintiff"), by counsel, and for his Complaint against Defendants, he alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for actual, statutory and punitive damages, costs and attorney's fees brought against both of the Defendants pursuant to 15 U.S.C. § 1681, *et seq.* (Federal Fair Credit Reporting Act or "FCRA"). Plaintiff also brings this action against Defendant Ocwen Loan Servicing, LLC for actual and/or statutory damages, costs and attorneys' fees pursuant to 12 U.S.C. § 2601, *et seq.* (Real Estate Settlement Procedures Act or "RESPA").

2. JURISDICTION

3. The jurisdiction of this Court is conferred by the FCRA, 15 U.S.C. § 1681(p) and 28 U.S.C. §1331.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1).

PARTIES

5. The Plaintiff, MICHAEL RELLIHAN ("Plaintiff"), is a natural person and a "consumer" as defined by 15 U.S.C. § 1681a(c).

6. Upon information and belief, OCWEN LOAN SERVICING, LLC (hereafter "Ocwen") is a limited liability company doing business as a mortgage originator and servicer in Virginia. At all times relevant hereto, Ocwen was a "furnisher" as governed by the FCRA and a servicer as governed by RESPA.

7. Defendant Trans Union, LLC. ("Trans Union") is a foreign limited liability company authorized to do business in Virginia. Trans Union is a "consumer reporting agency" as defined in 15 U.S.C. §1681a(f).

FACTS

8. In 2008, after suffering a financial hardship, Plaintiff filed a Chapter 13 bankruptcy in order to reorganize and pay his creditors.

9. In July 2012, as part of his debt reorganization, Plaintiff accepted a loan modification from Ocwen, dated July 2, 2012.

10. As part of the acceptance, Plaintiff signed the agreement and made the first payment of $783.26 by Money Gram prior to August 1, 2012.

11. Plaintiff has timely paid his modified mortgage payment per the terms of the loan modification.

12. In May 2013, Plaintiff completed his Chapter 13 payments and received a bankruptcy discharge.

13. To date, Plaintiff continues to pay his monthly mortgage payment on or before the due date provide in the loan modification agreement through Money Gram, which guarantees payment within 24 hours.

14. In early 2016, Plaintiff received a telephone call from an Ocwen employee who advised him he was "severely delinquent" and owed over thirty (30) mortgage payments.

15. Prior to this communication, Plaintiff had no idea that Ocwen considered him delinquent on his mortgage.

16. Shortly thereafter, Ocwen sent the Plaintiff a Notice of Default and Foreclosure Referral Letter.

17. In March 2016, Plaintiff forwarded a letter of dispute to Ocwen demanding that it correct this inaccurate payment history with his mortgage and disputing he was past due. He included proof of his payments from his first modified payment on July 23, 2012 through March 2016.

18. In this correspondence, Plaintiff identified his name and account number and explained in detail the reasons his account was in error.

19. Plaintiff sent the letter to Ocwen's "Research Department," which is the address Ocwen requires consumers to send correspondence for qualified written requests, notices of error and other requests for information.

20. Ocwen received the letter on April 4, 2016.

21. Ocwen forwarded correspondence dated April 18, 2016 that stated he owed $19,000.

22. Shortly after that, Plaintiff obtained his Trans Union credit report and learned that, despite having disputed the delinquency, Ocwen was reporting that he was over $17,000 past due and 120 days delinquent on his mortgage.

23. Again, this was untrue. Plaintiff had never missed or even been late on his modified mortgage payment.

24. Plaintiff sent a credit dispute letter to Trans Union. In that letter Plaintiff explained that the Ocwen account was being reported inaccurately as he had modified his mortgage and had never missed a payment on his loan modification. To verify the accuracy of his statement, Plaintiff provided the loan modification agreement and proof of all his payments from July 2012 through March 2016.

25. Trans Union provided the results of its investigation to the Plaintiff on or about May 24, 2016. Although Ocwen changed some information, Ocwen continued to report, inaccurately, the pay status of the account as "120 days past due" for March 2016 to Trans Union and that Plaintiff's last payment was made in February 2016.

26. Shortly after sending his dispute to Trans Union, Plaintiff received a response from Ocwen indicating that his "modification was denied in error" and he will be re-reviewed for a loan modification.

27. Ocwen's response did not make the appropriate corrections to Plaintiff's account, nor did Ocwen state the reasons for which the account was correct, which is a violation of RESPA.

28. Additionally, Ocwen did not correct the issue within thirty days as is required under RESPA.

29. Plaintiff sent a follow-up letter to Trans Union. In this letter, Plaintiff continued to dispute the inaccurate information in his credit report.

30. Trans Union received, but ignored, the Plaintiff's follow-up dispute and refused to delete the inaccurate information regarding the account from the Plaintiff's credit file.

31. Because the information enclosed demonstrated the reporting was inaccurate, Trans Union had actual knowledge of these inaccuracies and negligently, if not wilfully chose to ignore them and permit the reporting of the information.

32. Trans Union furnished the Plaintiff's consumer reports to multiple entities that contained the inaccurate derogatory information regarding the Ocwen accounts and Plaintiff was denied credit because of the derogatory reporting.

COUNT ONE: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681e(b)
(TRANS UNION)

33. Plaintiff incorporates all other factual allegations set forth in the Complaint.

34. Trans Union violated 15 U.S.C. §1681e(b) by failing to establish and/or to follow reasonable procedures to assure maximum possible accuracy in the preparation of Plaintiff's credit report and credit files it published and maintained.

35. As a result of Trans Union's violations of 15 U.S.C. §1681e(b), Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental, physical and emotional distress.

36. The violations by Trans Union were willful, rendering them liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Trans Union was negligent, which entitles Plaintiff to recovery under 15 U.S.C. §1681o.

37. Plaintiff is entitled to recover actual, statutory and punitive damages, costs and attorney's fees from Trans Union in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT TWO: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681i
(TRANS UNION)

38. Plaintiff incorporates all other factual allegations set forth in the Complaint.

39. Trans Union violated multiple sections of § 1681i by its conduct, acts and omissions, including but not limited to: (1) by failing to conduct a reasonable reinvestigation to determine whether the disputed information was inaccurate and record the current status of the disputed information or delete the item from Plaintiff's credit file in violation of § 1681i(a)(1); (2) by failing to review and consider all relevant information submitted by Plaintiff in violation of §1681i(a)(4); (3) by failing to promptly delete the disputed inaccurate items of information from Plaintiff's credit files or modify the item of information upon a lawful reinvestigation of § 1681i(a)(5)(A); and (4) by failing to promptly delete the disputed inaccurate items of information from Plaintiff's credit files or modify the item of information upon a lawful reinvestigation in violation of §1681i(a)(5)(A).

40. As a result of Trans Union's violations of §1681i, Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

41. The violations by Trans Union were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to § 1681n. In the alternative, Trans Union were negligent, which entitles Plaintiff to recovery under 15 U.S.C. §1681o.

42. Plaintiff is entitled to recover actual, statutory and punitive damages, costs and attorney's fees from Trans Union in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT THREE: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681s-2(b)(1)(A)
(OCWEN)

43. Plaintiff incorporates all other factual allegations set forth in the Complaint.

44. On one or more occasions within the past two years, by example only and without limitation, Ocwen violated 15 U.S.C. § 1681s-2(b)(1)(A) by failing to fully and properly investigate Plaintiff's disputes.

45. When the Plaintiff mailed his disputes to the consumer reporting agencies ("CRAs"), they use a dispute system named, "e-Oscar", which has been adopted by the credit reporting agencies and by their furnisher-customers such as Ocwen. It is an automated system and the procedures used by the CRAs are systemic and uniform.

46. When the CRAs receive a consumer dispute, they (usually via an outsource vendor) translate that dispute into an "ACDV" form.

47. Based on the manner in which Trans Union responded to the Plaintiff's disputes, representing that Ocwen had "verified" the supposed accuracy of its reporting, Plaintiff alleges that Trans Union did in fact forward the Plaintiff's dispute via an ACDV to Ocwen.

48. Ocwen understood the nature of the Plaintiff's dispute when they received the ACDV from the credit bureaus.

49. Notwithstanding the above, Ocwen follows a standard and systemically unlawful process when it receives the ACDV dispute.

50. Basically, all Ocwen does is review their own internal computer screen for the account and repeat back to the ACDV system the same information that Ocwen already reported to the CRAs.

51. When Ocwen receives a consumer dispute through e-Oscar, they do not conduct a substantive review of any sort to determine whether or not the information already in their computer system is itself accurate.

52. As a result of Ocwen's violations of 15 U.S.C. §1681s-2(b)(1)(A), Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

53. The violations by Ocwen were willful, rendering them liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Ocwen was negligent, which entitles Plaintiff to recovery under 15 U.S.C. §1681o.

54. Plaintiff is entitled to recover actual, statutory and punitive damages, costs and attorney's fees from Ocwen in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT FOUR: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681s-2(b)(1)(B)
(OCWEN)

55. Plaintiff incorporates all other factual allegations set forth in the Complaint.

56. On one or more occasions within the past two years, by example only and without limitation, Ocwen violated 15 U.S.C. § 1681s-2(b)(1)(B) by failing to review all relevant information provided by Trans Union.

57. As Plaintiff detailed in the previous count, Ocwen has elected to use the e-Oscar system for its FCRA disputes received through the CRAs.

58. Ocwen is aware of the meaning of the several dispute codes used by the CRAs in e-Oscar.

59. Nevertheless, Ocwen ignored such information and instead simply regurgitated the same information it had previously reported to Trans Union.

60. As a result of Ocwen's violations of 15 U.S.C. §1681s-2(b)(1)(B), Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

61. The violations by Ocwen were willful, rendering it liable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Ocwen was negligent, which entitles Plaintiff to recover under 15 U.S.C. §1681o.

62. Plaintiff is entitled to recover actual, statutory and punitive damages, costs and attorney's fees from Ocwen in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT FIVE: VIOLATION OF FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681s-2(b)(1)(C) and (D)

(OCWEN)

63. Plaintiff incorporates all other factual allegations set forth in the Complaint.

64. On one or more occasions within the past two years, by example only and without limitation, Ocwen violated 15 U.S.C. § 1681s-2(b)(1)(C) and (D) by publishing its representations within Plaintiff's credit files to Trans Union without also including a notation that the debt was disputed and by failing to correctly report results of an accurate investigation to Trans Union.

65. Specifically, Ocwen failed to add the "XB" code to the CCC (Compliance Condition Code) field in the ACDV dispute forms when it responded to Trans Union.

66. On information and belief, Plaintiff alleges that Ocwen rarely if ever adds the XB code or other notation that an account is disputed when they respond to e-Oscar ACDVs.

67. Plaintiff's disputes were bona fide as reflected by the loan modification agreement and proof of payments he submitted with his disputes.

68. As a result of Ocwen's violations of 15 U.S.C. §1681s-2(b)(1)(C) and (D), Plaintiff suffered actual damages, including but not limited to: loss of credit, damage to reputation, embarrassment, humiliation and other mental and emotional distress.

69. The violations by Ocwen were willful, rendering itliable for punitive damages in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n. In the alternative, Ocwen was negligent, which entitles Plaintiff to recovery under 15 U.S.C. §1681o.

70. Plaintiff is entitled to recover actual, statutory and punitive damages, costs and attorney's fees from Ocwen in an amount to be determined by the Court pursuant to 15 U.S.C. § 1681n and §1681o.

COUNT SIX: VIOLATION OF REAL ESTATE SETTLEMENT PROCEDURES ACT 12 U.S.C. § 2605e

(OCWEN)

71. Plaintiff realleges and incorporates all other factual allegations set forth in the Complaint.

72. Ocwen received Plaintiff's qualified written request on April 4, 2016, where he disputed that his account should be reported as past due.

73. Plaintiff submitted his written communications to the address at which he was instructed by Ocwen.

74. Despite receipt of the dispute, Ocwen reported Plaintiff as past due for the sixty day period following its receipt of Plaintiff's qualified written request in violation of 12 U.S.C. § 2605e(3).

75. Ocwen failed to timely conduct an appropriate investigation Plaintiff's inquiries; and failed to timely provide Plaintiff with a true and accurate written explanation or clarification.

76. As a result of Ocwen's violations of 12 U.S.C. § 2605e, Plaintiff suffered actual damages, including but not limited to: damage to reputation, embarrassment, humiliation and other mental and emotional distress from the threatened placement of his home in foreclosure and damage to his credit.

77. Ocwen is liable for actual damages in an amount to be determine by the Court pursuant to 15 U.S.C. § 2605(f).

78. Ocwen's conduct appears to be a pattern and practice of misconduct with many consumers. Plaintiff has been a victim of this pattern of misconduct. For each violation of 12 U.S.C. § 2605, Ocwen is also liable to Plaintiff for additional damages up to $2,000 per violation.

79. Plaintiff is also entitled to recover costs and attorneys' fees from Ocwen in an amount to be determined by the Court pursuant to 12 U.S.C. § 2605(f)(3).

WHEREFORE, Plaintiff demands judgment for actual, statutory and punitive damages against Defendants, jointly and severally; for their attorneys' fees and costs; for prejudgment and post-judgment interest at the judgment rate, and such other relief the Court deems proper.

TRIAL BY JURY IS DEMANDED.

Respectfully Submitted,
MICHAEL RELLIHAN

By:______________________
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